

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN THE MATTER OF)
)
District of Columbia Water and)
Sewer Authority)
5000 Overlook Avenue, SW)
Washington, DC 20032,)
)
Respondent.)
)
Proceedings under Sections 1414(a))
and (g) of the Safe Drinking)
Water Act, 42 U.S.C.)
§§300g-3(a) & (g))
)

AMENDMENT TO
SUPPLEMENTAL
ADMINISTRATIVE ORDER
FOR COMPLIANCE ON CONSENT
Docket No. SDWA-03-2005-0025DS

WHEREAS, the District of Columbia has not been granted primary enforcement responsibility for public water systems in the District pursuant to Section 1413 of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300g-2, and therefore, the United States Environmental Protection Agency Region III ("EPA") has primary enforcement responsibility for the SDWA in the District of Columbia;

WHEREAS, the District of Columbia Water and Sewer Authority ("DCWASA") is a "public water system" that provides piped drinking water for human consumption to persons in the District of Columbia (PWS ID DC000002). As such, DCWASA is a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, and a "community water system" within the meaning of 40 C.F.R. § 141.2;

WHEREAS, DCWASA owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. DCWASA is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g-1, and its implementing regulations, 40 C.F.R. Part 141;

WHEREAS, DCWASA is a "person" within the meaning of Section 1401(12) of the

Act, 42 U.S.C. § 300f(12);

WHEREAS, EPA's "Lead and Copper Rule" ("LCR"), 40 C.F.R. § 141.80-.91, establishes an "action level" for lead when the concentration of lead in more than ten percent of tap water samples collected during any monitoring period in accordance with 40 C.F.R. § 141.86 exceeds 0.015 mg/L (15 parts per billion or 15 ppb) based on a one-liter sample. The LCR requires a large system that is deemed to have optimized corrosion control to implement certain treatment techniques if the "action level" for lead is exceeded, including replacement of lead service lines that contribute more than 15 ppb to lead in drinking water and conducting public education to the consumers of the water system;

WHEREAS, on August 26, 2002, DCWASA reported that, during the compliance period July 1, 2001- June 30, 2002, more than ten percent of the water samples tested exceeded the 15 ppb lead action level. Specifically, the level of lead in first draw water samples from the 90th percentile of 53 residences was 75 ppb. Because this monitoring exceeded the LCR lead action level of 15 parts per billion at the 90th percentile, DCWASA returned to standard monitoring of tap samples, and was required to implement a lead in drinking water public education program, and to initiate lead service line replacement at a rate of seven percent of the lead service line inventory per year;

WHEREAS, since August 26, 2002, DCWASA has reported that the level of lead in first draw water samples from the 90th percentile of residences tested continues to exceed the LCR lead action level of 15 parts per billion;

WHEREAS, following an audit of DCWASA's compliance with the LCR, EPA determined that DCWASA had failed to comply with the LCR;

WHEREAS, DCWASA neither admitted nor denied that it had failed to comply with the

LCR as determined by EPA;

WHEREAS, on June 17, 2004, EPA and DCWASA entered into Administrative Order for Compliance on Consent Docket No. SDWA-03-2004-0259DS ("June 17, 2004 Consent Order") to address EPA's findings;

WHEREAS, on July 16, 2004, the the law firm of Covington and Burling released a "Summary of Investigation Reported to the Board of Directors of the District of Columbia Water and Sewer Authority ("Covington & Burling Report");

WHEREAS, among other things, the Covington & Burling Report stated that, for the compliance period ending September 30, 2003, at least 417 of the lead service lines reported by DCWASA to EPA pursuant to 40 C.F.R. §§ 141.84(b), (c) & (g) and 141.90(e), as not needing to be physically replaced (i.e., contributing less than 15 parts per billion lead) were tested by allowing the tap to run for five minutes before taking the sample ("five-minute methodology"). The five-minute methodology is not among the testing methodologies described in 40 C.F.R. § 141.86 (b)(3). The Covington & Burling Report also stated that DCWASA did not report the use of the five-minute methodology to EPA;

WHEREAS, based on the Covington & Burling Report and on other information obtained by EPA pursuant to an information request under Section 1445 of the SDWA , 42 U.S.C. § 300j-4(a), EPA determined that DCWASA had not complied with 40 C.F.R. §§ 141.84(b), (c) & (g) and 141.90(e) for the compliance period ending September 30, 2003 and that this noncompliance was not addressed in the June 17, 2004 Administrative Compliance Order;

WHEREAS, on January 14, 2005, EPA and DCWASA entered into a Supplemental Administrative Order for Compliance on Consent Docket No. SDWA-03-2005-0025DS ("January 2005 Supplemental Consent Order") to address DCWASA's noncompliance with 40

C.F.R. §§ 141.84(b), (c) & (g) and 141.90(e) for the compliance period ending September 30, 2003;

WHEREAS, among other things, Paragraph 18 of the Supplemental Consent Order directed and DCWASA agreed that DCWASA shall send a written notice by First Class Mail to every customer whose lead service line was "passed" using the five-minute methodology within twenty-one (21) days following EPA's approval of the written notice;

WHEREAS, on February 14, 2005, DCWASA submitted a draft written notice to EPA and on February 24, 2005, EPA approved the draft notice;

WHEREAS, as of March 18, 2005, EPA and DCWASA, while acting diligently and in good faith, had not reached agreement on the addresses to whom the notice described in Paragraph 18 of the January Supplemental Consent Order should be sent. Accordingly, DCWASA was unable to comply with Paragraph 18 by sending the notices within twenty-one (21) days after EPA's approval of the draft notice;

WHEREAS, EPA and DCWASA resolved the identity of those addresses to whom the notice in Paragraph 18 should be sent in a letter from Karen D. Johnson, Chief, Safe Drinking Water Branch, to Avis Russell, dated April 12, 2005; and

WHEREAS, pursuant to Paragraph 28, any modification of the January 2005 Supplemental Consent Order must be in writing and signed by both EPA and DCWASA,

Therefore, this 8th day of June, 2005, pursuant to Sections 1414(a)(2)(A), 1414(g), and 1445(a) of the SDWA, 42 U.S.C. §§ 300g-3(a)(2)(A), 300(g) and 300j-4(a), it is hereby ordered and DCWASA agrees:

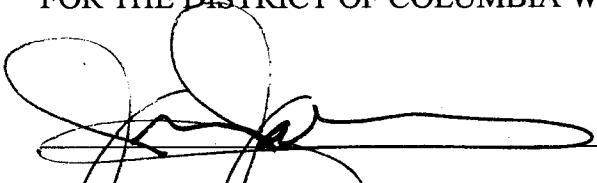
1. The January 14, 2005 Supplemental Consent Order is incorporated by reference as if fully set out herein. This amendment does not change the effective date or the timing of any

requirement set forth in the January 14, 2005 Supplemental Consent Order except as specifically described in Paragraph 2 below.

2. Paragraph 18 of the January 14, 2005 Supplemental Consent Order is modified as follows:

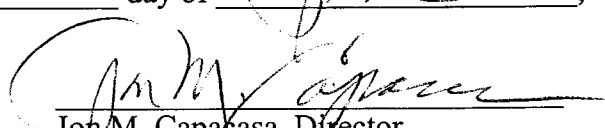
18. No later than May 3, 2005, ~~Within 21 days after EPA approves the draft notice described in Paragraph 16 above,~~ DCWASA shall send the draft notice by First Class Mail to every customer whose lead service line was "passed" using the five-minute methodology, regardless of whether that customer's service line was one of those reported in DCWASA's Annual Report for Lead Service Line Replacement Program dated September 30, 2003, or provide EPA with documentation that a particular customer's service line has been re-tested using the procedure described in 40 C.F.R. § 141.86 (b)(3), physically replaced, or determined to be copper. According to the document referenced in Paragraph 10 above, at least 566 customers' lines were passed using the five-minute methodology.

FOR THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY:


Jerry N. Johnson
General Manager
District of Columbia Water and Sewer Authority

5/20/05
Date

SO ORDERED, this 8th day of June, 2005.


Jon M. Capacasa, Director
Water Protection Division
United States Environmental Protection Agency
Region III